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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,995	05/11/2007	Greg H. Crocker	PKT-P1-06(US)	8906
28710	7590	12/14/2009	EXAMINER	
PETER K. TRZYNA, ESQ. P O BOX 7131 CHICAGO, IL 60680			CAMPEN, KELLY SCAGGS	
			ART UNIT	PAPER NUMBER
			3691	
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			12/14/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/575,995	<b>Applicant(s)</b> CROCKER, GREG H.	
	<b>Examiner</b> KELLY CAMPEN	<b>Art Unit</b> 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 17-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/22/2009</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

*The following is in response to the arguments filed 8/14/2009. Claims 1-45 are currently pending, with claims 17-45 being withdrawn from consideration. Applicant is reminded to include correct status identifiers for claims 17-45, these claims should be indicated as “withdrawn” not as “original” or “previously presented” as the restriction requirement was made final in the prior office action dated 2/18/2009.*

*The rejections are as stated below.*

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 10 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 10 recites a process comprising the method steps of receiving specifications, evaluating a trigger, and signaling execution of an option. Based on Supreme Court precedent, a proper process must be tied to another statutory class or transform underlying subject matter to a different state or thing (*In Re Bilski*; *Diamond v. Diehr*, 450 U.S. 175, 184 (1981 ); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v.*

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*Deener*, 94 U.S. 780,787-88 (1876)). Since neither of these requirements is met by the claim, the method is not considered a patent eligible process under 35 U.S.C. 101. To qualify as a statutory process, the claim should positively recite the other statutory class to which it is tied, for example by identifying the apparatus that accomplished the method steps or positively reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. Since the steps can be accomplished without the use of another statutory class, it is considered a non-statutory process.

**Examiner notes that even though the claim recites another statutory class via memory and a computer, the inclusion of the steps of receiving specifications into memory and a computer accessing further data are considered insignificant extra-solution activities and do not impose meaningful limits on the claimed invention. The steps of receiving and accessing do not impart patent-eligibility under 35 U.S.C. 101 on the claimed invention (See *Flook*, 437 U.S. at 590).**

A mere field-of-use limitation is generally insufficient to render an otherwise ineligible method claim patent eligible. This means the machine or transformation must impose meaningful limits on the method claim's scope to pass the test. In addition, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or a particular transformation of a specific article in an insignificant step, such as data gathering or outputting, is not sufficient to pass the test. See *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed. Cir. 2008).

Applicant should amend the claim to include "by a computer" after "evaluating" in line 5.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cristofich et al., U.S. Patent No. 6,173,270, in view of "A Consumer's Guide To Mortgage Lock-Ins," hereinafter Mortgage-X.

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Claims 1, 3, 7-11, 15, Cristofich discloses a system and method of controlling an option comprising a computer programmed (column 3 lines 49-65) for receiving information into a memory defining specifications for an option (column 6 lines 11-20, 40-47), the specifications including a trigger for executing the option (column 9, lines 1-11), evaluating the trigger and if the trigger occurs, signaling execution of the option (column 9, lines 12-25).

Cristofich fails to teach that the option is an option on a loan. Mortgage-X teaches such options on loans. While the phrase "option on a loan" is not used within Mortgage-X, the article describes mortgage rate lock-ins, which Examiner considers to be an "option on a loan". As described by Mortgage-X, a mortgage rate lock-in is an agreement between a borrower and a lender, in which the borrower pays the lender a fee (paragraph 9) in exchange for the lender's obligation to lend a given amount of money at a certain rate, for a certain price, at a future point in time (paragraph 5). A typical option on a stock is a contract in which one party pays another party a fee in exchange for one party's obligation to buy or sell a certain number of shares at a certain price at a future point in time. The mortgage rate lock-ins described by Mortgage-X are analogous to what one of ordinary skill in the art would consider to be an "option on a loan." As such the price which is locked in according to a stock option would be analogous to the interest rate, which is locked in, according to a mortgage rate lock-in. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Cristofich to include options on loans because Cristofich teaches options on stocks, and Mortgage-X teaches the concept of options on loans which is analogous to the option on stocks taught by Cristofich, merely using a different financial product than the one addressed by Cristofich. Since the concepts were known at the time of the invention, and the results are

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predictable, in that the resulting combination would allow a lender to automatically monitor and track mortgage rate lock-ins in the same way the invention discloses stock options as being monitored and tracked, the combination is deemed proper. In light of the combination, it would be an obvious next step to include the triggers of Cristofich into the mortgage rate lock-in of Mortgage-X for all the reasons that Cristofich describes such an automatic triggering and execution is beneficial to the stock option tracking and monitoring (column 1 lines 44-64, column 8 lines 34-41)

To further clarify, Barron's Dictionary of Finance and Investment Terms defines an option as a right to buy or sell property that is granted in exchange for an agreed upon sum. If the right is not exercised after a specified period, the option expires and the option buyer forfeits the money. With regards to securities, Barron's further defines an option. See the attached reference to pages 416 and 417 of Barron's.

Claim 2, Cristofich teaches the computer is programmed so as to execute the option if the trigger occurs (column 9 lines 12-25).

Claims 4, 5, 6, 12-14, 16, Cristofich and Mortgage-X fail to teach the trigger is a floor or a ceiling.

Official Notice is taken that floor and ceiling prices are old and well known in the art. As cited above, Cristofich teaches setting a trigger price in which an option is executed if the market reaches that price. There exists only three possible scenarios: (1) the trigger price is above the current market price, and when the market price moves up to the trigger price, the option is executed (ceiling), (2) the trigger price is below the current market price, and when the market

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price falls to the trigger price, the option is executed (floor), or (3) there is a trigger price above, and a trigger price below (floor and ceiling). Since there are a finite number of possibilities and the results are predictable, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Cristofich and Mortgage-X to include a floor rate and a ceiling rate.

### ***Response to Arguments***

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).



***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Campen whose telephone number is (571)272-6740. The examiner can normally be reached on Monday-Thursday 5:30 a.m.- 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kelly Campen/  
Primary Examiner, Art Unit 3691